



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF

**MAR 3 1 2005**

(AE-17J)

**CERTIFIED MAIL**

**RETURN RECEIPT REQUESTED**

Scott D. Matchett  
Principal Counsel, Environmental  
Georgia-Pacific Corporation  
133 Peachtree Street, NE  
P.O. Box 105605  
Atlanta, GA 30348-5605

Re: Fort James Operating Company  
Consent Agreement and Final Order

Dear Mr. Matchett:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) that resolves the above-described case regarding Fort James Operating Company. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on

**MAR 3 1 2005**

Pursuant to paragraph 27 of the CAFO, Fort James must pay the \$14,500 civil penalty within 30 days of **MAR 3 1 2005**.

Your check must display the case docket number, **CAA-05-2005 0017** and the billing document number, **050305016**.

Please direct any question regarding this case to Robert Thompson, Associate Regional Counsel, (312) 353-6700.

Sincerely yours,

William L. MacDowell, Chief  
Air Enforcement and Compliance Assurance Section MN/OH

Enclosure

cc: Bill Bauman - Wisconsin Department of Natural Resources  
Rick Wulk - Wisconsin Department of Natural Resources

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF: ) Docket No. ~~CWA-05~~ 2005 0017  
)  
Fort James Operating Company ) Proceeding to Assess an  
1919 South Broadway ) Administrative Penalty  
Green Bay, Wisconsin 53407 ) under Section 113(d) of the  
) Clean Air Act,  
) 42 U.S.C. § 7413(d)  
Respondent. )

REC'D  
MAR 31  
P3:10

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action instituted and settled under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. Complainant is the Director of the Air and Radiation Division, United States Environmental Protection Agency, Region 5 (U.S. EPA).

3. Respondent is Fort James Operating Company (Respondent or Fort James), a corporation doing business in Green Bay, Brown County, Wisconsin.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative

action may be commenced and concluded simultaneously by the issuance of a Consent Agreement and Final Order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to entry of this CAFO and agrees to comply with its terms.

#### **Jurisdiction and Waiver of Right to Hearing**

7. Fort James admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Fort James consents to the assessment of the civil penalty specified in this CAFO solely for the purposes of resolving this matter amicably and without litigation, and without making any legal or factual admissions.

9. Fort James waives its right to request a judicial or administrative hearing on any issue of fact or law set forth in this CAFO, and waives its right to appeal this final order under Section 113(d) of the Act, 42 U.S.C. § 7413(d).

#### **Statutory and Regulatory Background**

10. Under Section 608 of the Act, the Administrator of U.S. EPA promulgated the Protection of Stratospheric Ozone Standards

at 40 C.F.R. Part 82, Subpart F, Recycling and Emissions Reduction.

11. The Administrator of U.S. EPA (the Administrator) may assess a civil penalty of up to \$27,500 per day of violation up to a total of \$220,000 for violations that occurred from January 31, 1997 to March 15, 2004, and may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations that occurred after March 15, 2004 under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19, as amended by 69 Fed. Reg. 7121 (Feb. 13, 2004).

12. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

13. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this complaint.

**Alleged Violations**

14. At the Fort James facility at 1919 South Broadway, Green Bay, Brown County, Wisconsin 54307-9130, an industrial process refrigeration unit, serial number 99HDX2133, and one appliance, number 49-3-3, used the class II refrigerant HCFC-22, or R-22. Both units contained more than 50 pounds of refrigerant, and have been removed from service.

15. The Stratospheric Ozone Standards, Subpart F, apply to any person servicing, maintaining, repairing, or owning an "appliance", as that term is defined at 40 C.F.R. §82.152.

16. Appliance 49-3-3 experienced leaks during the time period between April 10, 2001, and July 23, 2001, resulting in an annual leak rate exceeding 15 percent.

17. An owner of an appliance normally containing more than 50 pounds of refrigerant, pursuant to 40 C.F.R. § 82.156(i)(5) is required to repair leaks if the appliance is leaking at a rate such that the loss of refrigerant will exceed 15 percent of the total charge during a 12-month period. Repairs must bring annual leak rates to below 15 percent during a twelve month period.

18. Fort James is in violation of 40 C.F.R. § 82.156(i)(5) and Section 608 of the Act, 42 U.S.C. § 7471g, for failing to repair a leaking appliance such that the annual leak rate is brought below 15 percent.

19. The Stratospheric Ozone Standards, at 40 C.F.R. § 82.152, define "industrial process refrigeration" as complex customized appliances used in the chemical pharmaceutical, petrochemical and manufacturing industries. These appliances are directly linked to the industrial process.

20. Industrial process refrigeration unit 99HDX2133 experienced leaks on February 1, 2001, and June 6, 2001, resulting in an annual leak rate exceeding 35 percent.

21. An owner of industrial process refrigeration equipment normally containing more than 50 pounds of refrigerant, pursuant to 40 C.F.R. § 82.156(i)(3), is required to perform follow-up verification tests to ensure that repairs have been successful.

22. Fort James is in violation of 40 C.F.R. § 82.156(i)(3) and Section 608 of the Act, 42 U.S.C. § 7471g, for failing to properly conduct a follow-up verification test.

23. On October 4, 2000, Fort James serviced unit 99HDX2133. Fort James also repaired unit 99HDX2133 following the discovery of leaks on February 1, 2001, and June 6, 2001.

24. As an owner of industrial process refrigeration equipment normally containing more than 50 pounds of refrigerant, pursuant to 40 C.F.R. § 82.156(i)(3), Fort James is required to record the date and type of service or repair provided.

25. Fort James is in violation of 40 C.F.R. § 82.156(i)(3), and Section 608 of the Act, 42 U.S.C. § 7471g, for not

documenting the service performed on October 4, 2000, and the repair of leaks discovered on February 1, 2001 and June 6, 2001.

**Civil Penalty**

26. Based on analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case, and Respondent's agreement to perform a supplemental environmental project, U.S. EPA has determined that an appropriate civil penalty to fully and completely settle this action is \$14,500.

27. Fort James must pay the \$14,500 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America," within 30 days after the entry of this CAFO. U.S. EPA will promptly notify Fort James in writing when the CAFO is entered.

28. Fort James must send the check to:

U.S. Environmental Protection Agency  
Region 5  
P.O. Box 70753  
Chicago, Illinois 60673

29. A transmittal letter, stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must write the case docket number and the billing document number on the face of the check. Respondent must send copies of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (E-19J)  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3590

Attn: Compliance Tracker, (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3511

Robert L. Thompson (C-14J)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3511

30. This civil penalty is not deductible for federal tax purposes.

31. If Fort James does not pay timely the civil penalty, or any stipulated penalties due under paragraph 43, below, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

32. Interest will accrue on any overdue amount from the date payment was due at a rate established under 31 U.S.C.

§ 3717. Fort James will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. Fort James will pay a quarterly nonpayment penalty each quarter



during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

**Supplemental Environmental Project**

33. Fort James must complete a supplemental environmental project (SEP) designed to protect the environment by retrofitting two refrigeration units at its Green Bay Mill, which currently use a Class I/Class II refrigerant, to a non-Class I/Class II refrigerant (R134A or equivalent), which EPA has deemed to pose a reduced threat to stratospheric ozone depletion.

34. Fort James must complete the SEP pursuant to the previous paragraph within six months of the date this CAFO is entered. The scope of work, attached as Exhibit A, specifies in detail the equipment to be retrofitted.

35. Fort James must spend at least \$43,500 to purchase and install the equipment and material to retrofit these two units.

36. Fort James certifies that it is not required to perform the SEP by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this CAFO. Fort James further certifies that it has not received, and is not negotiating to receive, credit for this SEP in any other enforcement action.

37. U.S. EPA may inspect the facility at any time to monitor Fort James' compliance with this CAFO's SEP requirements.

38. Fort James must submit a SEP completion report to U.S. EPA within eight months following the date this CAFO is entered. This report must contain the following information:

- a. detailed description of the SEP as completed;
- b. description of any operating problems and the actions taken to correct the problems;
- c. itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services; and
- d. certification by Fort James and the contractor performing the work, if any, that the SEP was completed in compliance with this CAFO.

39. Fort James must submit all notices and reports required by this CAFO by first class mail to:

Attn: Compliance Tracker (AE-17J)  
 Air Enforcement and Compliance Assurance Branch  
 Air and Radiation Division  
 U.S. Environmental Protection Agency, Region 5  
 77 West Jackson Blvd.  
 Chicago, Illinois 60604-3590

40. In each report that Fort James submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of

those individuals responsible for obtaining the information, the information is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

41. Following receipt of the SEP completion report described in paragraph 38 above, U.S. EPA must notify Fort James in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and U.S. EPA will give Fort James 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and U.S. EPA will seek stipulated penalties under paragraph 43.

U.S. EPA will send this notice to:

Scott D. Matchett  
Principal Counsel, Environmental  
Georgia-Pacific Corporation  
133 Peachtree Street, NE  
P.O. Box 105605  
Atlanta, GA 30348-5605

42. If U.S. EPA exercises option b. or c. above, Fort James may object in writing to the deficiency notice within 10 days of receiving the notice. U.S. EPA and Fort James will negotiate in good faith to resolve any such objection. The parties will have 30 days from U.S. EPA's receipt of Fort James' objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give Fort James a written decision on its objection. Fort James will comply with any requirements that U.S. EPA imposes in

its decision. If Fort James does not complete the SEP as required by U.S. EPA's decision, Fort James will pay stipulated penalties to the United States under paragraph 43 below.

43. If Fort James violates any substantive requirement of this CAFO relating to the SEP, Fort James will be subject to stipulated penalties to the United States as follows:

a. Except as provided in subparagraph b, below, if Fort James did not complete the SEP satisfactorily according to this CAFO, in such a manner that identified deficiencies cannot be reasonably cured pursuant to paragraphs 41 and 42, Fort James is subject to a stipulated penalty of \$43,500.

b. If Fort James did not complete the SEP satisfactorily, but U.S. EPA determines that Fort James: (i) made good faith and timely efforts to complete the SEP; and (ii) certified, with supporting documents, that it spent at least 90 percent of the required amount on the SEP, Fort James will not be liable for any stipulated penalty.

c. If Fort James satisfactorily completed the SEP, but spent less than 90 percent of the required amount on the SEP, Fort James is subject to a stipulated penalty of \$5,000.

d. If Fort James failed to submit timely the SEP completion report required by paragraph 38 above, Fort James is subject to a stipulated penalty of \$500 for each day after the report was due until it submits the report.

44. U.S. EPA's determinations of whether Fort James satisfactorily completed the SEP and whether it made good faith, timely efforts to complete the SEP will bind Fort James, except that Fort James retains any rights or defenses that it may have in any action initiated pursuant to paragraph 31, above.

45. Fort James must pay any stipulated penalties within 30 days of receiving U.S. EPA's written demand for the penalties. Fort James will use the method of payment specified in paragraphs 28-32, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

46. Any public statement that Fort James makes referring to the SEP must include the following language, "Fort James undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Fort James for violations of the standards that protect stratospheric Ozone."

47. If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:

a. Fort James must notify U.S. EPA in writing within 10 days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Fort James's past and proposed actions to prevent or minimize the delay, and a schedule to carry out those actions. Fort James must take all reasonable actions to avoid or minimize any delay. If Fort James fails to notify U.S. EPA according to this paragraph, Fort James will not receive an extension of time to complete the SEP.

b. If the parties agree that circumstances beyond the control of Fort James caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.

c. If U.S. EPA does not agree that circumstances beyond the control of Fort James caused or may cause a delay in completing the SEP, U.S. EPA will notify Fort James in writing of its decision and any delays in completing the SEP will not be excused.

d. Fort James has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

#### **Final Statement**

48. This CAFO fully and completely settles U.S. EPA's claims for civil penalties for the violations alleged in the Findings of Fact and Conclusions of Law section of this CAFO and in the portion of December 4, 2003 Finding of Violation dealing with Stratospheric Ozone Standards.

49. This CAFO does not restrict U.S. EPA's authority to seek Fort James' compliance with the Act and other applicable laws and regulations. Nor does this CAFO affect Fort James' responsibility to comply with the Act and other applicable federal, state and local laws, and regulations.

50. Fort James certifies that, to the best of its knowledge and belief after reasonable inquiry, it is complying fully with the Protection of Stratospheric Ozone Standards at 40 C.F.R. Part 82, Subpart F, Recycling and Emissions Reduction.

51. This CAFO constitutes an "enforcement response" as that term is used in "U.S. EPA's Clean Air Act Stationary Source Civil Penalty Policy" to determine Fort James' "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

52. The terms of this CAFO bind Fort James, and its successors, and assigns.

53. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents and to bind that party to its terms.

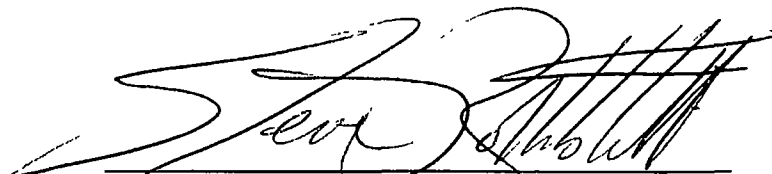
54. Each party agrees to bear its own costs and fees in this action.

55. This CAFO constitutes the entire agreement between the parties.

56. This CAFO shall terminate by its own terms, without any further action, upon Fort James' receipt of notification from U.S. EPA pursuant to paragraph 41 that Fort James has satisfactorily completed all SEP requirements, including the correction of any identified deficiencies, provided that Fort James has paid any penalties assessed and made due under this CAFO.

**U.S. Environmental Protection Agency, Complainant**

3/30/2005  
Date

  
Stephen Rothblatt, Director  
Air and Radiation Division  
U.S. Environmental Protection  
Agency, Region 5 (A-18J)

**Fort James Operating Company, Respondent**

March 24 2005

Date

Russell D. McCollister

Russell D. McCollister  
Senior Vice President,  
Green Bay Manufacturing  
Fort James Operating Company



CONSENT AGREEMENT AND FINAL ORDER

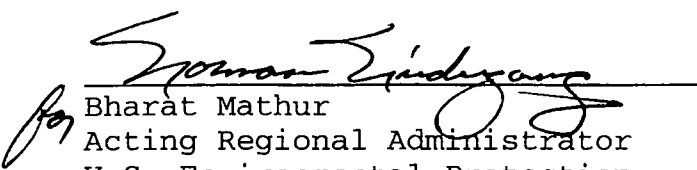
Fort James Operating Company

Docket No. ~~CAA-95-~~ 2005 0017

Final Order

It is ordered as agreed to by the parties and as stated in the consent agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk.

3/31/05

  
Bharat Mathur  
Acting Regional Administrator  
U.S. Environmental Protection  
Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3511

## **Exhibit A**

### **Fort James Green Bay-Broadway Street Facility** **Supplemental Environmental Project**

Fort James Operating Company's Green Bay-Broadway Facility will partially fulfill its settlement of the Ozone-Depleting Substances (ODS) violations alleged in EPA's December 4, 2003 Finding of Violation by implementing the SEP described below.

Fort James will retrofit two refrigerant-containing appliances at the Green Bay-Broadway Facility to eliminate their use of Class I/II refrigerant (R-22) and replace it with a non-Class I/II substitute refrigerant (R-134A or the equivalent). Both units have a refrigerant charge of 76 pounds and are used in warm-weather months to cool the MCC (motor control center) room in the Facility's #51 Building. The appliances are identified as follows:

- Heatcraft, Inc., Primary MCC Cooling Unit, Model #WDI3000H24, Serial #A00A00149
- Heatcraft, Inc., Secondary MCC Cooling Unit, Model #WDI3000H24, Serial #A00A00150

The project requires the Facility to modify or replace components in both units to enable it to accommodate the new refrigerant. Specifically, the project will entail the following steps:

- Replace evaporation coil on each unit
- Coat each coil with a corrosion-resistant coating
- Replace the 30-ton condenser and piping for each unit
- Coat all piping with corrosion-resistant epoxy paint
- Refill both units with R-134A refrigerant

The project will eliminate the risk of future releases to the environment of Class I/II refrigerants from these units and prevent any future risk of noncompliance with the refrigerant equipment repair/recycling rules, thereby also reducing EPA's compliance oversight responsibilities and costs.

Fort James will complete this SEP within six months of entry of the CAFO.

CERTIFICATE OF MAILING

I, Loretta Shaffer, certify that I hand delivered the original of the Consent Agreement and Final Order, docket number ~~CA-05-2005~~ 0017 to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed a correct copy by first-class, postage prepaid, certified mail, return receipt requested, to Scott Matchett by placing it in the custody of the United States Postal Service addressed as follows:

Russel D. McCollister  
Vice President and Mill Manager  
Georgia-Pacific Corporation  
1919 South Broadway  
Green Bay, WI 54307-9130

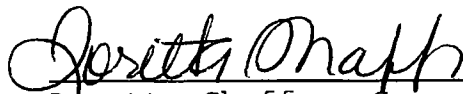
on the 31<sup>ST</sup> day of March 2005.

I also certify that I sent copies of the CAFO to

Bill Bauman  
Wisconsin Department of Natural Resources  
101 South Webster Street  
P.O. Box 7921 (AM/7)  
Madison, WI 53707

Rick Wulk  
Wisconsin Department of Natural Resources  
Northeast Region  
1125 North Military Avenue - Box 10448  
Green Bay, WI 54307

on the 31<sup>ST</sup> day of March, 2005.

  
Loretta Shaffer, Secretary  
AECAS, (MN/OH)

CERTIFIED MAIL RECEIPT NUMBER: 70010320 0005 9025 6992